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VICE CHAIR

**Docket # 2006-47**  
**95 Lumber Street**  
**Hopkinton, Massachusetts**

**AUTOMATIC SPRINKLER APPEALS BOARD**  
**DECISION AND ORDER**

**A) Statutory and Regulatory Framework**

This is an administrative appeal held in accordance with Massachusetts General Laws Chapter 30A; Chapter 148, section 26G½, relative to a determination of the Hopkinton Fire Department, requiring the installation of an adequate system of automatic sprinklers in a building owned and operated by the Hopkinton Sportsmen's Association (hereinafter referred to as the Appellant). The building, which is the subject of the order, is located at 95 Lumber Street, Hopkinton, Massachusetts.

**B) Procedural History**

By written notice received by the Appellant on January 4, 2006, the Hopkinton Fire Department issued an Order of Notice to the Appellant informing the facility about the provisions of a new law, M.G.L c. 148, s. 26G½, which requires the installation of an adequate system of automatic sprinklers in certain buildings or structures. The building subject to the order is located at 95 Lumber Street, Hopkinton, MA. The Appellant filed an appeal of said order on February 14, 2006. The Board held a pre-hearing status conference relative to this appeal on June 28, 2006. A full hearing before the Board on this appeal was held on June 14, 2007, at the Department of Fire Services, Stow, Massachusetts.

Appearing on behalf of the Appellant were: David G. Margolis, Board of Directors, Miguel A. Linera, Architect, and Robert R. Draper, President. Appearing on behalf of the Hopkinton Fire Department was Chief Gary T. Daugherty and Fire Prevention Officer Robert A. Santucci.

Present for the Board were: John Mahan, Acting Chair; State Fire Marshal Stephen D. Coan; Alexander MacLeod, Peter Gibbons, Aime DeNault and George A. Duhamel. Peter A. Senopoulos, Esquire, was the Attorney for the Board.

**C) Issue(s) to be Decided**

Whether the Board should affirm, reverse, or modify the enforcement action of the Hopkinton Fire Department relative to the subject building in accordance with the provisions of M.G.L. c. 148, § 26G½?

**D) Evidence Received**

1. Application for Appeal by Appellant
2. Statement in Support of Appeal
3. Order of Hopkinton Fire Department
4. 1<sup>st</sup> Notice of Pre-Hearing Status Conference to Parties
5. 1<sup>st</sup> Notice of Hearing to Parties
6. Letter to Appellant from Sprinkler Appeals Board regarding Status
7. Letter from Appellant to Sprinkler Appeals Board regarding Status
8. 2<sup>nd</sup> Notice of Hearing to Parties
9. Appellant's Exhibits (A-F)
10. Certificate of Inspection

**E) Subsidiary Findings of Fact**

- 1) By Notice received by the Appellant on January 4, 2006, the Hopkinton Fire Department issued an Order to the Appellant, requiring the installation of an adequate system of automatic sprinklers in a building located at 95 Lumber Street, Hopkinton, MA, in accordance with the provisions of M.G.L. c. 148, s.26G½. This building is owned and operated by the Hopkinton Sportsmen's Association, a private social organization which, among other things, promotes outdoor sport activities relating to rifle and pistol shooting, archery, skeet shooting and hunting activities. The club currently has 300 members and is open to members, their families, and members' guests.
- 2) The subject building is described by the Appellant as a two level sporting/gun club that has an indoor pistol range in the basement level, and a members' bar and function/meeting room on the ground level. The building is of masonry block construction with a metal web steel roof covered with a rubber membrane. According to the building's Certificate of Inspection issued on December 13, 2006, the two-story building has two use group classifications. The ground floor bar area is listed as having an "A-2" use group classification and the meeting/function hall on said ground floor is listed as an "A-3" use group. The Certificate indicates that the building has an allowable occupant load of 241 persons, broken-down as follows: Bar area: 18 stools; 133 standing room; Main Hall: 90 tables and chairs. According to the parties, there is currently no specific occupant capacity established for the indoor basement area which features indoor firearms and archery ranges and storage rooms used to store firearms and ammunition.

- 3) The function/bar area consists of a large, open, free flowing room which features a bar with 18 bar stools, large television sets at both ends of said bar, dart boards and one pool table. Representatives of the Appellant indicated that the facility has an entertainment license for the televisions. Although not presented at the hearing, the Appellant indicated that the organization has a full service liquor license, which allows service of all kinds of liquors.
- 4) Each level consists of approximately 2,862 gross s.f., as measured from the exterior for each levels. According to the Appellant's the first floor level has occupiable space consisting of approximately 1,947 s.f.
- 5) The Appellant testified that the facility is open to members 24 hours a day, and that the upstairs bar would typically open at 3:30 p.m. and close at 9:30 p.m. A bartender and full bar service was provided during all hours of operation. The Appellant indicated that club members are each issued card keys for the facility.
- 6) The Appellants asserted that in the last year, the bar operation has been closed and the facility has given up their lottery license pending the resolution of issues regarding bar management and the sprinkler requirement. The Appellant also indicated that while the facility, at one time held rental events such as birthday parties, bridal showers; engagement, graduation and retirement parties, the facility is no longer routinely used for such purposes. Rentals are now limited to the pistol ranges, which are typically used by various groups, including area police departments.
- 7) The Appellant stated that when the facility held events in the past, (until last year), meals were typically served and were often the main attraction. Food for the events was provided by the parties or by private caterers. It was indicated that the kitchen has been renovated in the recent past. The representatives for the Appellant indicated that there is no stage in the function area and that usually live entertainment or bands were not featured. During some events a disc jockey was hired for entertainment and dancing purposes.
- 8) The Appellant testified that during a typical day or evening at the club, sportsmen would come in and use the indoor pistol range or outdoor skeet range and, when finished, may appear at the bar for drinks and socializing. Additionally, Appellant indicated that there was a "social membership" option that allowed such limited memberships to used the club for social activities only, including the use of the bar facilities.
- 9) There was testimony indicating that there is no operational separation between the bar area and the function area as the facility allows the "free flow" of persons and activities between the bar area and the function hall.
- 10) The fire department representative indicated that the Order to install sprinklers was based upon the overall building capacity of 100 persons or over, and the existence of a liquor license and the regular use of bar/lounge- type accommodations and service. Chief Daugherty did not contest

the factual characteristics of the building, including its curtailed use and description, as presented

by the Appellants. The Chief noted that the facility has a concentrated occupant load rating based upon the floor area and current capacity limits.

- 11) The representatives of the Appellant testified that it would be a great financial burden for the club to install a sprinkler system. The Appellant's technical consultant (architect) indicated that the cost to install a sprinkler system would be approximately \$30,000. However he indicated that this price does not include costs associated with issues relating to water supply and water pressure. The town water main is more than 1 mile away from the building and it appears that a pump system may be required. These issues could possibly raise the total cost to between \$60,000 to \$80,000. No modified or partial sprinkler installation options for certain portions of the building were presented for the Board's consideration.
- 12) Both parties indicated that discussions have been held regarding options relating to reducing the occupant load (to below 100 persons) and the installation of an improved/updated fire protection and detection system. The Appellant has considered design plans for an interior wall. However, it appears that building permits have not been issued for such work, as of this date.

#### **F) Ultimate Findings of Fact and Conclusions of Law**

- 1) The subject building is legally considered a public assembly with a capacity of 100 persons or more.
- 2) The provisions of the 2<sup>nd</sup> paragraph of M.G.L. c. 148, s. 26G½, in pertinent part states: "every building or structure, or portions thereof, of public assembly with a capacity of 100 persons or more, that is designed or used for occupancy as a night club, dance hall, discotheque, bar, or similar entertainment purposes...(a) which is existing or (b) for which an approved building permit was issued before December 1, 2004, shall be protected throughout with an adequate system of automatic sprinklers in accordance with the state building code". The law was effective as of November 15, 2004.
- 3) In a memorandum dated 1-10-05, this Board issued an interpretive guidance document relative to the provisions of this law, found in c.148, s.26G½. This law was a portion of a comprehensive legislative initiative undertaken as the result of a tragic Rhode Island nightclub fire, which took place in February 2003. In said memorandum, this Board noted that the statute did not contain a definition of the words "nightclub, dance hall, discotheque, bar or similar entertainment purposes". This Board reviewed the legislative intent and background of the statute and concluded that there were certain characteristics typical of nightclubs, dancehalls and discotheques. The board indicated that such occupancies are characterized, but not limited to, the following factors:
  - a) No theatrical stage accessories other than raised platform;
  - b) Low lighting levels;

- c) Entertainment by a live band or recorded music generating above-normal sound levels;
- d) Later-than-average operating hours;
- e) Tables and seating arranged or positioned so as to create ill defined aisles;
- f) A specific area designated for dancing;
- g) Service facilities primarily for alcoholic beverages with limited food service; and
- h) High occupant load density.

It was the interpretation of this board that such characteristics are typical of the “A-2 like” occupancy (which was a general reference to the A-2 use group referenced in 780 CMR, The State Building Code) and that these are the type of factors that heads of fire departments should consider in enforcing the sprinkler mandates of M.G.L. c.148, s.26G½. It was noted that the list of characteristics was not necessarily all-inclusive. Additionally, the factors may be applied individually or in combination depending upon the unique characteristics of the building at the discretion of the head of the fire department. Some of these particular characteristics, such as entertainment by a live band, recorded music generating above normal sound levels and a specific area designated for dancing, may not necessarily exist in certain establishments that are considered a “bar.” Nevertheless, the provisions of M.G.L. c. 148 s. 26G½, clearly apply to “every building or structure, or portions thereof, of public assembly with a capacity of 100 persons or more, that is designed or used for occupancy as a...**bar**...”.

- 4) Based upon the testimony at the hearing, this building has been used and is currently designed to accommodate a variety of events. Portions of this facility are currently legally classified as within the “A-2” use group. This facility currently features portions or areas, clearly designed for “A-2 like” activities” described in this Board’s memorandum dated 1-10-05. Additionally, there are portions of this establishment that are clearly designed as a “bar,” as that word is used in section 26G½.
- 5) The Board notes that the Appellant has voluntarily decided to not feature function events or bar operations pending the resolution of the sprinkler installation issue. However, such voluntary suspension of activities, without formal reclassification of the building’s use group, occupant load, or licensing scheme, cannot support a determination eliminating the need for a sprinkler system. This conclusion is further supported by the statute’s use of the word “designed” in addition to the word “used” in establishing the scope of buildings within the application of said law.
- 6) The ground level of this establishment features a wide-open area with no physical or operational separation between that portion used as a bar and the function hall/activity area. This physical configuration, combined with a lack of operational features that clearly distinguish those portions used as a bar area from those used for function, permit the entire ground level area to be operated

in a manner typical of a bar or lounge with a capacity of 241 persons. Additionally, based upon the current capacity limits and the available floor area, the establishment also legally allows for concentrated occupancy.

- 7) The facility has a full liquor license and may remain legally open until after midnight. It has, in the past and is currently, legally allowed to routinely and regularly serve all kinds of alcoholic beverages to members' and their guests. The establishment features a pool table, dartboards, several large screen televisions and, in the past, has featured lottery activities. Such features create a décor and atmosphere typical of a "bar-like" setting.

**G) Decision**

After a careful review of all the evidence presented at the hearing and based upon the aforementioned findings and reasoning, the Board hereby determines that certain portions of the building located at 95 Lumber Street, Hopkinton are currently and legally designed as a "bar" or for "A-2" like characteristics within the meaning of M.G.L c. 148, s. 26G½. Accordingly, the Order of the Hopkinton Fire Department is hereby **modified**. An adequate system of automatic sprinklers shall be required in all areas of the ground level of this building. The basement level, as currently used and designed, is not subject to the provisions of s. 26G½.

1. The submission of plans and specifications for such installation shall be submitted to the head of the fire department within 90 days of the date of this decision.
2. Installation of said adequate sprinkler system shall be completed by November 15, 2007, unless further extended by the head of the fire department in accordance with section 11 of Chapter 304 of the Acts of 2004.

**H) Vote of the Board**

John Mahan	In favor
Stephen D. Coan	In favor
Alexander MacLeod	n favor
Peter Gibbons	In favor
Aime DeNault	In favor
George Duhamel	In favor

**I) Right of Appeal**

You are hereby advised that you have the right, pursuant to section 14 of chapter 30A of the General Laws, to appeal this decision, in whole or in part, within thirty (30) days from the date of receipt of this order.

SO ORDERED,



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John Mahan, Acting Chairman

Dated: August 24, 2007

**A COPY OF THIS DECISION AND ORDER WAS FORWARDED BY CERTIFIED MAIL, RETURN RECEIPT TO:**

David Margolis  
Hopkinton Sportsmen's Assoc.  
374 Singletary Lane  
Framingham, Massachusetts 01702-6163

Chief Gary T. Daugherty, Sr.  
Hopkinton Fire Department  
73 Main Street  
Hopkinton, Massachusetts 01748